

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL NO. 1635 OF 1984****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

4 Whether this case involves a substantial question of
law as to the interpretation of the Constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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BALKESHBEN & ORS.- Appellant(s)**Versus****SHANABHAI SOMABHAI DABI & ANR. - Respondent(s)**

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Appearance :

Shri S. S. Jadeja for Appellant(s) : 1 - 8.

None for Respondent(s) : 1.

Ms. Maya Desai for Respondent(s) : 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG**Date : 30/08/2007****ORAL JUDGMENT**

The appellants, being aggrieved by the award dated 17th

February, 1981 passed by the learned Motor Accident Claims Tribunal, Kheda at Nadiad in M.A.C.P. No. 154 of 1980, are before this Court with a submission that the learned Tribunal was unjustified in awarding only a sum of Rs.39,750/- to the appellants. They have prayed for enhancement to the extent of Rs.60,000/-.

2. In absence of any cross appeal or cross objections, this Court is not required to look into the question of rashness, negligence and liability of the respondents to the extent of 75%.

3. The appellants have also not challenged 25% negligence on the part of the deceased - driver, namely, Inayatulla son of Mohamadbhai Vora.

4. Shri S. S. Jadeja, learned Counsel for the appellants, after taking me through the evidence and the findings recorded by the learned Tribunal below, submitted that the learned Tribunal below erred in holding that the monthly income of the deceased could be Rs.300/- only. According to him, if a sum of Rs.100/- is deducted from the said amount under the head of personal expenses of the deceased, then, only Rs.200/- is left for as many as eight dependents, which would mean that each dependent could be getting Rs.25/- per month or around 0.85 paise per day. He submitted that if a person was maintaining the family of more

than eight persons after deducting his personal expenses, then, the income must have been more than what has been assessed by the learned Tribunal.

5. Ms. Maya Desai, learned Counsel for the respondent-Corporation, however, submitted that the learned Tribunal was justified in awarding the said amount and there is no scope for any enhancement.

6. After going through the evidence available on the record and taking into consideration the fact that the deceased was a rickshaw driver, I would be entitled to justifiably hold that the income of the deceased could be at least Rs.30/- per day. Even otherwise from the statement of Bilkeshben, widow of the deceased, it would appear that the deceased was earning a sum of Rs.40 – Rs. 45 per day. Out of the said amount of Rs.900/-, I would be justified in deducting a sum of Rs.300/- towards the personal expenses of the driver. I would hold the dependency to be Rs.600/- per month. Though the learned Tribunal below has applied the multiplier of 20 (twenty), but, in the opinion of this Court, the multiplier of 20 (twenty) even could not be applied in case of a young boy of 23 years, the maximum multiplier could be 17 (seventeen). Under the circumstances, I would hold that the yearly dependency could be Rs.7,200/-. Applying the multiplier of 17 (seventeen) to it, I hold that the dependency would be to the extent of

Rs.1,22,400/-. The learned Tribunal below has held that the rickshaw driver was negligent to the extent of 25%. I would, therefore, deduct the said amount by 1/4th and would hold that the total dependency could be Rs.91,800/-. Out of the said amount, the learned Tribunal below has awarded a sum of Rs.36,000/- under the head of loss of income. Reducing the said amount already awarded, I hold that in addition to what has been awarded in favour of the appellants, they would be entitled to the additional sum of Rs.55, 800/-.

7. The respondent Nos.1 and 2 shall be jointly and severally liable to pay the said amount to the claimants. The amount shall carry interest at the rate of 6% per annum from the date of the claim petition till the date of realisation.

8. The appeal is allowed to the extent indicated above. No costs.

[R.S.Garg, J.]

*kamlesh**